

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

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SIOUX CITY BOARD OF REVIEW and  
ALAN JORDAN ASSESSOR SIOUX  
CITY, IOWA,

Petitioners,

vs.

IOWA PROPERTY ASSESSMENT  
APPEAL BOARD,

Respondent,

and

ELDON AND REGINA ROTH,

Intervenors.

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NO. CVCV172159

RULING ON PETITION FOR  
JUDICIAL REVIEW

Now on this 3<sup>rd</sup> day of April, 2017, the above matter is deemed submitted to the Court to resolve the issues presented by the Sioux City Board of Review regarding the decision of the Iowa Property Assessment Appeal Board concerning the valuation of the property at 3915 Martins Yard, Sioux City, Iowa.

PROCEDURAL HISTORY

Eldon and Regina Roth filed a petition with the Sioux City Board of Review regarding the tax assessment of their property as of January 1, 2015. The assessor placed a value on the property of \$1,442,700. \$160,300 was allocated to the land and \$1,282,400 was allocated to the improvements. The Roths claimed that the assessed

value was greater than the value authorized by law under Section 441.37(1)(a) and (b). On May 4, 2016, the Roths filed a Petition to the Local Board of Review challenging the assessment of their property. In June 2015, the Board of Review denied the petition. The Roths then filed their appeal of the Board of Review's decision to the Iowa Property Assessment Appeal Board. On August 10, 2016, the PAAB held a hearing on the appeal. The PAAB entered its ruling on August 23, 2016. The PAAB found that the fair market value of the subject property was \$1,221,350. On September 8, 2016, the Sioux City Board of Review filed its Petition for Judicial Review.

#### GENERAL PRINCIPLES OF LAW

The burden of proof for appeals before the PAAB is set out in Iowa Code § 441.21(3). The PAAB shall determine anew all questions arising before the local Board of Review which relate to the liability of the property to assessment or the amount thereof. All of the evidence shall be considered and there shall be no presumption as to the correctness of the valuation of assessment appealed from.

If an appeal is taken to the district court from the decision of the part of the PAAB, a district court's review shall be limited to the corrections of errors of law. In an appeal from the PAAB to the district court no new evidence to sustain the grounds of the PAAB's decision may be introduced as part of the appeal. See I.C. § 441.38(1). The decision of the PAAB is considered a final agency action for further purposes of judicial review.

A person or party aggrieved or adversely affected by the decision of the PAAB may seek judicial review of the decision as provided for in Chapter 17A. The district court considering a petition for judicial review in an appellate capacity from a PAAB

decision may reverse or modify the PAAB's decision if the agency's decision is erroneous under a section of the law and a party's substantial rights of been prejudiced.

A district court reviewing a decision of the PAAB may not engage in improper reweighing of the evidence. Making a determination as to whether some evidence trumps other evidence or whether one piece of evidence is qualitatively weaker than another piece of evidence is not an assessment for the district court to make when it conducts a substantial evidence review of an agency decision. It is the agency's duty as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue. In regards to expert witnesses, it is the agency's duty as the trier of fact to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to either accept or reject the opinion of an expert witness. The reviewing court only determines whether substantial evidence supports the finding according to those witnesses who the agency relied upon in making its decision. See *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007).

When the local Board of Review claims that the PAAB's decision is based upon an irrational, illogical, or wholly unjustifiable application of the law to the facts and is not supported by substantial evidence, the reviewing court may reverse the factual findings of the PAAB only if they are not supported by substantial evidence. See *Polk County Board of Review vs. Property Assessment Appeal Board*, 2010 WL 3155049 (Iowa App. 2010).

#### PARTIES' POSITIONS

The Sioux City Board of Review valued the property at \$1,442,700, allocating \$160,300 to the land and \$1,282,400 to the improvements. The assessed value was

set by the city assessor based upon a cost approach by use of the Iowa Real Property Appraisal Manual.

The evidence introduced at the PAAB hearing by the Roths was the appraisal done by Tri-State Valuation and Consulting. The appraisal gave the property a value of \$1 million for both land and improvements. The appraisal was based on the appraiser's use of three comparative sales of property.

The first argument of the local Board of Review is that the comparable sales used by Tri-State Valuation and Consulting are not in fact comparable sales. The Board of Review asserts that under Iowa law the valuation by the taxpayers' expert witness is not competent. Therefore, the taxpayers have failed to prove by a preponderance of the evidence that the initial assessment was excessive.

The second argument of the local Board of Review is that the appraiser had wrongfully determined that the above-grade living area was 11,157 square feet when in fact it was 15,744 square feet. The appraiser had failed to include in his calculations of the above-grade living area the third floor ballroom which had a square footage of 4587 square feet. The local Board asserts that because the appraiser had to make very large adjustments to the alleged comparable properties makes the ultimate appraisal speculative and unreliable. Essentially, the local Board of Review is asserting that the PAAB's decision is not supported by substantial evidence and was made without regard to the facts and controlling law. As such, the local Board maintains that the PAAB's decision is arbitrary and capricious.

The PAAB asserts that it had the authority to determine the credibility of the evidence presented to it as well as the right to weigh the evidence. The PAAB indicates

that the appraisal was legally competent and was admitted into the record without objection. The PAAB weighed it against other evidence in the record and came to its conclusion. The PAAB asserts that comparable sales should be similar but need not be identical. In addition, where comparable properties are not identical to the subject property, those incongruities go to their evidentiary weight and credibility. The PAAB maintains that whether a property is sufficiently similar or comparable to the subject property is left to the sound discretion of the agency.

The PAAB concluded that the appraisal's comparative sales were not wholly incomparable and that the appraiser's adjustments rendered the properties reasonably comparable and were worthy of consideration by the agency even though the comparable properties exhibited significant points of difference.

The PAAB also asserts that the subject property was clearly unique in size and in amenities which resulted in a reduced pool of potential buyers that could impact its value and at the same time presented problems in finding comparable property sales to estimate the subject property's value. The PAAB maintains that the appraiser's comparable sales were reasonably comparable to the subject property and does not require a rejection of the appraisal in its entirety. The PAAB maintains that it was free to accept that evidence which it found to be the most reliable and reject that evidence which is determined to be unreliable.

The PAAB also asserts that the sales comparison approach alone may not readily establish a subject property's market value because the record, in totality, suggests that there simply was no other better comparables available for analysis in determining the subject property's value. The PAAB argues that since the appraisal

complied with the statutory scheme, it was competent and admissible evidence of value.

The PAAB also argues that given the significant adjustments that were required to the appraiser's comparable sales due to the fact that there were very few properties offering comparability to the subject property in the general market area, the PAAB concluded that the cost approach should also be given consideration and the PAAB gave equal value to the appraisal as well as the assessor's cost approach in determining the subject property's fair market value.

The PAAB maintains that their weighing and balancing was necessary in this case because the subject property was clearly an over-improvement or superadequacy. The PAAB concluded that the appraisal, as well as the assessor's cost approach, set out the superadequacy of the subject property. The PAAB noted that under the cost approach, superadequacy is accounted for by applying a functional obsolescence percentage to the subject property. The PAAB maintains that the superadequacy of the subject property combined with the absence of sales of similarly sized properties can cause a reasonable person to question whether the assessor's arbitrary obsolescence adjustment fully accounts for the property's unique characteristics. The PAAB did not presume the assessment to be correct. The PAAB maintains that because of the circumstances in this case, recognizing the inadequacies inherent in the assessor's cost approach and the appraisal sales approach it was not error for the agency to consider and weigh both approaches. The PAAB maintains that it could not rely solely on the sales comparison approach to determine the value the subject property. The PAAB determined that the sales method, being the preferred method, should be given some weight in the final conclusion of value. The PAAB maintains that its giving equal weight

to the assessor's cost approach accounted for any deficiencies in the appraisal. It maintains that its approach was reasonable and sound.

The Roths assert that the PAAB's reliance on the appraisal was appropriate notwithstanding the significant differences between the subject property and the comparable sales used by the appraiser. The Roths maintain there is no finding by the PAAB that the appraiser's sales approach was without any probative value. The Roths maintain that whether a comparable sale is sufficiently similar to the subject property is left to the sound discretion of the agency. They maintain that the PAAB's conclusion that the appraisal was competent evidence was reasonable and it was up to the PAAB to determine its weight and credibility. The Roths also point out that where a qualified expert states that the properties are sufficiently comparable for appraisal purposes, it is better to leave the dissimilarities to the examination and cross-examination of the expert rather than to exclude the testimony altogether.

The Roths maintained that the PAAB's consideration of the appraisal and the underlying comparable sales was not illogical, irrational, unjustifiable, arbitrary, or capricious.

#### ANALYSIS

The Board contends the PAAB's decision was "based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the [agency]." See I.C. § 17A.19(10)(c). The Petitioners also argue that the decision of the PAAB was not supported by substantial evidence when the record is viewed as a whole. See I.C. § 17A.19(10)(f). The Petitioners also contend that if PAAB is vested by a provision of the law in the discretion

of the agency to interpret the law, its “decision is based upon an irrational, illogical, or wholly unjustifiable interpretation of the law.” See *Id.* § 17A.19(10)(m). The Board also argues that the PAAB’s finding was arbitrary or capricious as their finding was made without regard to the laws or facts. See *Id.* § 17A.19(10)(n).

The Board claims PAAB's factual findings were not supported by substantial evidence when the record is viewed as a whole. The Petitioners identify that their position is supported with two observations:

First as noted above PAAB found that there was lack of sales of truly comparable properties in Sioux City, thus there is not competent evidence in the record that the subject property was assessed for more then [sic.] the value authorized by law. Secondly the evidence that was offered by the Roths was so speculative as to make it unreliable. PAAB found that Mr. Collins had failed to include in his calculations of above grade living area the third floor ballroom. (Order p 4). If you add in his calculated square footage (4,587 sq ft) of the third floor ballroom he should have been using 15,744 square feet of living area for the subject property in his comparable sales analysis. . If you use 15,744 square feet for the subject property his comparables are only 23%, 20% and 34% the size of the Roths property.

The factual findings of the PAAB are reversed only if they are not supported by substantial evidence. I.C. § 17A.19(10)(f). “Substantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. *Id.* § 17A.19(10)(f)(1).

Substantial evidence supports an agency's decision even if the interpretation of the evidence may be open to a fair difference of opinion. “Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the [agency's] decision is not supported by substantial evidence. An appellate court should



not consider evidence insubstantial merely because the court may draw different conclusions from the record.” *Arndt*, 728 N.W.2d at 393.

As identified above, “making a determination as to whether evidence trumps other evidence or whether one piece of evidence is qualitatively weaker than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision. *Arndt*, 728 N.W.2d at 394, see *Tim O’Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996) (stating under a substantial evidence review it is not the task of the reviewing court “to weigh the evidence or the credibility of the witnesses”). The reviewing court only determines whether substantial evidence supports a finding “*according to those witnesses whom the [commissioner] believed.*” *Id.* at 395; *Id.* (emphasis added).

**A. Whether the PAAB erred in finding that the tax assessment of the Roth property was excessive?**

*Burden of Proof*

Before the board of review, the protesting taxpayer bears the burden of proof. I.C. § 441.21(3)(b). Before PAAB, the burden remains on the taxpayer. See *id.* § 441.21(3)(b), 441.37A(2). If the property owner “ ‘offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor,’ the burden shifts to the board of review to uphold the assessed value.” *Boekeloo v. Bd. of Review*, 529 N.W.2d 275, 277 (Iowa 1995) (quoting I.C. § 441.21(3)). If the taxpayer fails to offer competent evidence of two disinterested witnesses, then the burden of persuasion remains with the taxpayer to establish that the assessed valuation was excessive. *Id.* at 279; *Foreman & Clark of*

*Iowa, Inc. v. Bd. of Review*, 286 N.W.2d 169, 172 (Iowa 1979).

Here, the record is clear that two disinterested witnesses did not testify as no one testified. The hearing consisted of the admittance of Mr. Collins' report into evidence and argument by the parties. Therefore, the burden of proof remained with the taxpayers, the Roths, and it was their burden to establish that the assessed value was excessive. In order to meet their burden, the Roths submitted the report by Mr. Collins that determined that the property should be assessed at \$1,000,000 rather than the \$1,442,700, the value given by the County Assessor. The Petitioners assert that the report submitted by the Roths is not competent and therefore they failed to meet their burden of proof that the assessment of their property was excessive. PAAB and the Roths both argue that the appraisal was legally competent and properly considered on the question of value of their property.

*Competency of the Collins report*

Evidence is competent under the statute when it complies "with the statutory scheme for property valuation for tax assessment purposes." *Boeke/oo*, 529 N.W.2d at 279. The legislature has prescribed a statutory scheme that must be followed concerning real estate valuation for tax assessment purposes. Property is taxed at its assessed exchange value or market value as outlined in Iowa Code section 441.21(1)(b) which states in part:

The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable

availability or unavailability of persons interested in purchasing that property, shall be taken into consideration in arriving at its market value.

I.C. § 441.21(1)(b)

Assessing market value under the market data approach is contingent upon comparable sales of other properties. *Ross v. Board of Review of City of Iowa City*, 417 N.W.2d 462, 464 (Iowa, 1988). Under the statutory scheme, alternative methods to the comparable sales approach to valuation of property cannot be used when adequate evidence of comparable sales is available to readily establish the market value by that method. *Ross*, 417 N.W.2d at 465. A witness must first establish that evidence of comparable sales was not available to establish market value under the comparable-sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 782 (Iowa, 2009) (noting if evidence “does not comport with the statute, the evidence is not relevant and is, therefore, inadmissible”). However, in determining whether the evidence is competent, the examination is whether the evidence was admissible on the question of value, not whether the evidence is found to be persuasive. *Id.* at 784.

The Property Assessor determined the assessment of the Roth property based on a cost approach to value while the report by Collins was based solely on the sale comparison approach, so the Collins report. In a tax assessment appeal, the party relying on the “other factors” approach has the burden of persuading the fact finder that the fair market value of the property cannot be readily established by the comparable sales approach. *Bartlett & Co. Grain v. Board of Review*, 253 N.W.2d 86, 89 (Iowa 1977).

In the record before the PAAB, which this Court reviewed, it cannot find any

explanation from the Assessor as to why it chose not to determine the assessment of the Roth property by following the statutory scheme of using the sales comparison approach and instead used the cost approach to value. There is also nothing in the record which indicates whether the Assessor made an attempt to determine if there were similar properties in the area or outside of the Sioux City area before making the decision to not use the comparable sales approach and instead used the cost approach to value.

The Collins report noted that the market in Sioux City was limited but used 3 sales in Sioux City and made the required adjustments to compensate for the differences between the two. However, the Court does note that the Board did not object to the Collins report being admitted into evidence and acknowledged the expertise of Collins. The Board instead argued that the report should be given no weight in the PAAB's decision.

In its findings, the PAAB identified that the properties in the Collins report lacked **substantial** similarities and so necessitated significant adjustments, however comparable sales do not need to be identical but only similar to the subject property and whether properties are **sufficiently** similar to be comparable is generally left to the sound discretion of the district court, in this case the PAAB. *Wellmark, Inc. v. Polk County Bd. of Review*, 875 N.W.2d 667, 681 (Iowa, 2016)(quoting *Soifer*, 759 N.W. 2d at 783) (emphasis added).

As noted in *Soifer*,

“the approach followed in Iowa in admitting evidence of comparable sales is accurately reflected in the following statement from a sister state: ‘[W]here the properties are reasonably similar, and a qualified expert states his opinion that they are sufficiently comparable for appraisal

purposes, it is better to leave the dissimilarities to examination and cross-examination than to exclude the testimony altogether.’ *Stewart v. Commonwealth*, 337 S.W.2d 880, 884 (Ky.Ct.App.1960). As this court has recently noted in a different context, a requirement that evidence be competent does not mean that it must be credible. *Johnson v. Iowa Dist. Ct.*, 756 N.W.2d 845, 850 n. 4 (Iowa 2008).”

*Soifer*, 759 N.W.2d at 784.

This Court finds that treating the report by Collins as competent was not an error as the report followed the comparable sales approach, which was required I.C. § 441.21. This Court notes that the issues the PAAB had with the report determined its persuasive value and how much weight it would give to the report’s findings, not whether the evidence is competent.

**B. Whether the PAAB erred in its determination of the value or correct assessment of the Roth property?**

The Board argues PAAB's decision was arbitrary and capricious and unsupported by substantial evidence. See I.C. § 17A.19(10)(f), (n). The Board's argument is premised on PAAB's consideration of the report completed by Collins regarding the assessment value of the Roth property. The crux of the Petitioner's argument is that because the PAAB order found that from the facts presented, the properties selected by both sides for comparison necessitated significant adjustments, that they surmised that there is a lack of truly comparable properties in Sioux City and that once they made that finding, it should no longer had used any information or given any weight to the Collins report.

As identified above, “[s]ubstantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the

establishment of that fact are understood to be serious and of great importance. *Id.* § 17A.19(10)(f)(1). Substantial evidence supports an agency's decision even if the interpretation of the evidence may be open to a fair difference of opinion. “Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the [agency's] decision is not supported by substantial evidence. An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record.” *Arndt*, 728 N.W.2d at 393.

In its order reviewing the decision of the board, the PAAB concluded that the evidence provided, the County assessment and the Collins report, should be weighed equally rather than one over the other, given that both assessments had issues that made relying on only one improper. The PAAB identified that both sides limited their scope to properties in Sioux City rather than searching outside the city limits. Another judge or board may have interpreted the evidence before it differently given the uniqueness of the property, but that does not mean that the interpretation by the PAAB in this case is not supported by substantial evidence.

The Court finds that the PAAB's order reveals a careful consideration of the property, its uniqueness and the difficulty faced by both the Assessor and Mr. Collins in determining the value of the property. PAAB provided a detailed summary and its rationale for reaching its final determination. The PAAB explained that their determination was based on using both assessments weighted equally, rather than one versus the other since both had issues. “The advantage of using multiple appraisal techniques lies primarily in those instances where the differing techniques lead to similar conclusions concerning market value and therefore tend to support each other.

When the varying techniques produce divergent valuations, it does not necessarily follow that market value is accurately divined by averaging the divergent results or in applying the divergent results under arbitrarily weighted formulas.” *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 598 (Iowa,1990). Without an explanation a weighted application of the various results produced by different appraisal methods is meaningless to a reviewing court. *Id.* at 599 n.2.

However, the PAAB did provide an explanation for using both approaches and giving them equal weight, identifying that because of the larger adjustments made in the approach by Collins, that it was not willing to exclusively rely on the report despite it following the statutorily favored approach. The PAAB identified and chastened both Mr. Collins and the Board of Review for limiting their search for comparable sales to Sioux City and given the property’s uniqueness; the search should have been expanded outside the city limits. The decision also noted that the properties submitted by the Board of Review on the 2015 Residential Comparable worksheet lacked information to evaluate their comparability with the Roth property, but that facially, the summary of the sales of those properties would require significant adjustments to make them comparable. As noted with the Collins report, large adjustment could decrease the reliability of the conclusions, so like the Collins report, it would not use just one approach by itself.

The statutory preference for evaluations based on comparable sales applies only to those situations where the value may be readily established by that method alone. In instances where the value cannot be established *solely* by comparable sales, there is

nothing in the statute which requires comparable sales data to be weighted more heavily in the “other factors” approach than other relevant data. *Id.* at 597 (emphasis added). In this case, the PAAB found that even though Collins followed the statutory approach of comparable sales in his report, given the issues with the Collins’ approach, it would not weigh that approach more heavily than the approach by the assessor but that it would not weigh it less. In essence, the PAAB found the evidence competent but was critical of it and so they found that it could not rely on the sale comparison approach alone. Given the evidence presented to the PAAB, its decision was not arbitrary or capricious as it identified the path it used to lead to its final decision and the factors used why and how it came to its decision given the property’s uniqueness.

Therefore, the PAAB's decision is supported by substantial evidence of record and is not arbitrary or capricious.

#### SUMMARY

Based on the forgoing analysis, the Court finds no error on the part of the PAAB, and holds that the final Agency action, filed August 23, 2016, is affirmed.

#### ORDER

IT IS THEREFORE ACCORDINGLY ADJUGED THAT the August 23, 2016 decision of the PAAB is AFFIRMED, and Petitioner’s Petition for Judicial Review is OVERRULED. Costs taxed to the Petitioners.





State of Iowa Courts

**Type:** OTHER ORDER

<b>Case Number</b>	<b>Case Title</b>
CVCV172159	S.C. BOARD OF REVIEW ET AL V ROTH, ELDON & REGINA ET AL

So Ordered

A handwritten signature in black ink that reads "John D. Ackerman". The signature is written in a cursive style with a large, stylized "J" and "A".

**John D. Ackerman, District Court Judge,  
Third Judicial District of Iowa**